IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

WEDNESDAY, THE 10TH JANUARY 2007 / 20TH PAUSHA 1928

WP(C).No. 33817 OF 2006(A)

PETITIONER:

K.K.KUNJU, KOLENCHERRY HOUSE,
MATTOOR P.O., KALADY.

BY ADV. SRI.P.B.SAHASRANAMAN
SRI.K.JAGADEESH
SRI.T.S.HARIKUMAR

RESPONDENTS:

---

1. KERALA STATE ELECTRICITY BOARD,
REP. BY ITS SECRETARY, VYDYUTHI BHAVANAM,
PATTOM, THIRUVANANTHAPURAM.

2. DEPUTY CHIEF ENGINEER,
OFFICE OF THE DEPUTY CHIEF ENGINEER,
ANTI POWER THAFT SQUAD, CENTRAL REGION,
ALUVA.

3. THE ASST. EXECUTIVE ENGINEER,
ELECTRICAL SECTION NO.1,
K.S.E.BOARD, OFFICE OF THE ASST. EXECUTIVE
ENGINEER, ELECTRICAL SECTION NO.1,
MUVATTUPUZHA.

4. THE SUB-ENGINEER IN CHARGE,
ELECTRICAL SECTION NO.I,
MUVATTUPUZHA.

S.C. FOR K.S.E.B. SRI. JOSE J. MATHEIKEL.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R. RAMAN, J.

==========

W.P.(C) NO. 33817 OF 2006

==========

DATED THIS, THE 10TH DAY OF JANUARY, 2007

J U D G M E N T

Ext. P3 is an order passed by the Deputy Chief Engineer, Anti Power Theft Squad (APTS) Ernakulam, in an appeal filed by the petitioner pursuant to the direction issued by this Court in W.P.(C) 4681/2006. Petitioner challenges the order Ext.P3 demanding an amount of Rs. 6,87,516/-. Consequent demand has been made pursuant to Ext.P3, by Ext.P4 produced as per I.A. 390/2007.

2. The main contention of the petitioner is that he has not been afforded an opportunity of being heard in the matter in that the mahazar witnesses were not examined and no opportunity was given to him to cross examine the witnesses without which no reliance can be placed on the mahazar to fasten any liability on him. According to him, reasonable opportunity includes right to cross examine the witnesses and to rebut the presumption, if any, to be drawn from the statement contained in the mahazar. He placed reliance on the decision of the apex court in **Transmission Corporation of A.P. Ltd. Vs. M/s. Rama Krishna Rice Mil**l (2006 AIR SCW 975).

3. Heard. It is the case of the petitioner that no opportunity was afforded to the petitioner before accepting the mahazar. Even though it is seen that the Sub Engineer in charge was examined and his deposition was also referred to therein, no opportunity to cross examine the said deponent was given to the petitioner. Though it is stated that there were six independent witnesses petitioner was not given opportunity to cross examine any of them. Whether in the circumstances, any prejudice was caused to the petitioner and whether reasonable opportunity was afforded to him would arise for consideration. In the decision reported in **Transmission Corporation of A.P. Ltd. vs. M/s. Rama Krishna Rice Mill** (2006 AIR SCW 975) the apex court held as follows:

> "In order to establish that the cross examination is necessary, the consumer has to make out a case for the same. Merely stating that the statement of an officer is being utilized for the purpose of adjudication would not be sufficient in all cases. If an application is made requesting for grant of an opportunity to cross examine any official, the same has to be considered by the adjudicating authority who shall have to either grant the request or pass a reasoned order if he chooses to reject the application. In that event an adjudication being concluded, it shall be certainly open to the consumer to establish before the appellate authority as to how he has been

> prejudiced by the refusal to grant opportunity to cross-examine any official. As has been rightly noted by the High Court in the impugned judgment where the reliance is only on accounts prepared by a person, cross examination is not necessary. But where it is based on reports alleging tampering or pilferage, the fact situation may be different. Before asking for cross examination the consumer may be granted an opportunity to look into the documents on which the adjudication is proposed. In that event, he will be in a position to know as to the author of which statement is necessary to be cross-examined. The applications for cross-examination are not to be filed in routine manner and equally also not to be disposed of by adjudicator in casual or routine manner. There has to be application of mind by him. Similarly, as noted above, the consumer has to show as to why cross examination is necessary."

4. In the light of the above observation, it is for the appellate authority to consider the request of the petitioner for cross examination of the mahazar witness and also the deponent examined and in case such opportunity is refused it has to pass a reasoned order for rejecting such request. The appellate authority has to apply its mind and decide whether the absence of an opportunity to cross examine the witness will prejudicially affect the petitioner and if it is found to be so, necessarily an opportunity has to be given. Otherwise it will cause miscarriage of justice.

5. In such circumstances, Ext.P3 is quashed. There will be a direction to the appellate authority to reconsider the matter afresh, in the light of what is stated above and pass fresh orders.

The writ petition is disposed of as above.

P.R. RAMAN,
JUDGE.

knc/-